

**FLATHEAD COUNTY PLANNING BOARD  
MINUTES OF THE MEETING  
NOVEMBER 19, 2008**

**CALL TO ORDER**

A meeting of the Flathead County Planning Board was called to order at approximately 6:00 p.m. Board members present were Marie Hickey-AuClaire, Gordon Cross, Gene Dziza, Frank DeKort, Marc Pitman, Mike Mower and Jim Heim. Rita Hall and Randy Toavs had excused absences. Dianna Broadie, Allison Mouch and Jeff Harris represented the Flathead County Planning & Zoning Office.

There were eight people in the audience.

**APPROVAL OF  
MINUTES**

DeKort made a motion seconded by Dziza to approve the August 13, September 10, September 17, and September 24, 2008 meeting minutes.

The motion carried by quorum.

**PUBLIC  
COMMENT  
(not related to  
agenda items)**

Harris introduced Donna Valade as the new board secretary.

**PRELIMINARY  
PLAT/TIMBER  
BAY  
TOWNHOUSES  
(FPP 08-17)**

A request by Montana Build Construction, LLP for Preliminary Plat approval of Timber Bay Townhouses, an eight (8) townhouse lot subdivision on 0.625 acres. Lots in the subdivision are proposed to have public water and sewer systems. The property is located at 655 Commerce Street.

**STAFF REPORT**

Dianna Broadie reviewed Staff Report FPP 08-17 for the Board.

**APPLICANT  
PRESENTATION**

Brian Long, of Long Engineering, represented the applicants. He spoke about the Bigfork Land Use Advisory Committee (*BLUAC*) meeting and their discussion regarding storm water issues. The applicants have received approval from the Department of Environmental Quality (*DEQ*). The site plan has not changed. They have removed the emergency access between the two units. After discussion with the fire department, they removed the access because they have double frontage of accessible roads on both sides. The street-side parking and sidewalks along Commerce Street were in the site plan for DEQ and were approved.

**AGENCY  
COMMENTS**

None.

**PUBLIC  
COMMENT**

None.

<b>APPLICANT REBUTTAL</b>	None.
<b>STAFF REBUTTAL</b>	None.
<b>MAIN MOTION TO ADOPT F.O.F.</b>	Dziza made a motion seconded by Hickey-AuClaire to adopt staff report FPP 08-17 as findings-of-fact.
<b>ROLL CALL TO ADOPT F.O.F.</b>	On a roll call vote the motion passed unanimously.
<b>MOTION TO RECOMMEND APPROVAL</b>	Heim made a motion seconded by Hickey-AuClaire to adopt Staff Report FPP 08-17 and recommend approval to the Board of County Commissioners.
<b>ROLL CALL TO RECOMMEND APPROVAL</b>	On a roll call vote the motion passed unanimously.
<b>PRELIMINARY PLATT/HODGE CREEK SOUTH AMD LOT 5 (FPP 08-18)</b>	A request by Mark and Kathryn Panicek for Preliminary Plat approval of Amended Lot 5, Hodge Creek South, a two lot single-family residential subdivision on 20 acres. Lots in the subdivision are proposed to have individual water and septic systems. The property is located at 310 Hodge Creek Drive.
<b>STAFF REPORT</b>	Allison Mouch reviewed FPP 08-18 for the board.
<b>BOARD QUESTIONS</b>	<p>Mower asked if an applicant is given easement across state trust lands if they ask for it.</p> <p>Harris said no. The State Lands Board determines the value of the easement as well as if they will grant the easement. He explained what state trust lands are for; they are there to maximize profit for state schools. Flathead County is currently doing an inventory on all county roads to see which roads cross through state trust lands. He spoke of securing these easements for the county and getting legal and physical access for these roads. They don't currently have legal access. Right now, they need to deal with this issue each time proposed land division comes up. The state has asked the county to trace back through secondary state highways as well to see which ones cross state trust lands.</p> <p>Heim asked if a prescriptive easement was ever granted.</p> <p>Harris replied there was no prescriptive easement or adverse possession on state lands.</p> <p>Cross asked what the rationale for shifting the easement is.</p>

Harris said the reality is, the state will not be closing those county maintained roads. When a land division comes up, that deals with this issue, staff is obligated to bring it to the board.

Pitman asked what the fallout would be if they didn't put a condition on this proposal.

Harris did not know due to the fact this is a new situation for the county. He said staff is obligated to bring this issue to the board and will make the same presentation to the commissioners who will make a final decision. The owners of pre-existing lots are going to continue to use those roads. The state is asking staff to help clean some of this up and has asked the county to require the easement.

The board and staff discussed the issue of county roads crossing through state trust lands and what should be required of an applicant requesting a subdivision.

Mouch pointed out the Stoltze easement on the map.

## **APPLICANT PRESENTATION**

Narda Wilson, 184 Midway Drive, represented the applicants. She said they had some issues with the proposed conditions. She talked about the variance and handed a map to the board members. She spoke about the easement and how the property owners thought it had been extinguished. She had seen no example of the easement being used a year ago; now the easement appears active. If the easement were relocated the impacts would be the same. If a boundary line adjustment (*BLA*) was done, the impacts would be the same. By requiring the property owner to renegotiate with Stoltze & Plum Creek to either relocate or abandon the easement does not appear to have a practical purpose. They would like the planning board to recommend that the commissioners approve the variance to allow the easement to stay in the same place. They are being required to pave 650 feet of Ashley Lake Road or pay cash-in-lieu. She spoke of the formula in the subdivision regulations regarding paving and the cost to the applicant. She also spoke of Hodge Creek Reserve, a subdivision that received final plat this past spring and asked the planning board for the same requirement for paving. To require an ordinary citizen to acquire an easement from DNRC for public use is unreasonable. She asked the planning board to remove that condition. They would like a recommendation for approval of the variance, only be required to pave approximately 77 feet, and not be required to acquire the easement.

Joe Kauffman, Big Sky Surveying, spoke about the easement that cuts across lot 5. They did show easements on the final plat for Hodge Creek South. Dennis Pewitt and Paul Wachholz, applicants, were working with Stoltze and Plum Creek to abandon those easements. He showed the board members a map of what had been filed with the Clerk & Records office and said the landowners thought the

**BOARD  
QUESTIONS**

easement had been abandoned.

Mower said the easement is a legally recorded easement. It is a very bad assumption to assume the easement has been abandoned.

Wilson said eight property owners signed a document stating the easement had been abandoned and relocated.

Cross asked if there is any way Stoltze might remedy the situation.

Kauffman said that is where the easement would stay. Unless you have a copy of the original document you would not know the easement was there. The remainder is lot 5 of Hodge Creek South. He wanted to reiterate they were not trying to hide things.

Wilson explained the location of the easements.

Dziza asked what the acreage of the land is that is cut off by the easement.

Kauffman said it would be almost a half acre.

Mower asked how much dirt road there is.

Wilson said about three miles.

Kauffman said they showed the easements on the final plat of Hodge Creek South in 2005.

**AGENCY  
COMMENTS**

None.

**PUBLIC  
COMMENT**

None.

**APPLICANT  
REBUTTAL**

Wilson wanted to respond to new information she said was not presented in the staff report or presentation of conversations with Plum Creek. She wanted clarification as to if Plum Creek indicated they would be willing to abandon or relocate the easement.

Mouch said no they did not.

Wilson said the easement was filed with lot 5 of Hodge Creek South subdivision. She would be surprised if Plum Creek would be willing to abandon this easement.

**STAFF  
REBUTTAL**

Mouch pointed out that during her site visit, the road did appear to be used. There was activity on the road in Hodge Creek South and Hodge Creek Reserve. She spoke with Lorie Woods who works for Plum

Creek. Their concern was the health and safety for a variance. If staff allows the easement to remain it is a real concern for Plum Creek that whoever buys lot 5b may close the easement or obstruct it and not allow active use. It is a valid issue for both Stoltze and Plum Creek.

Harris said in granting an easement there is sufficient criterion that surrounds a variance. Staff did not hear any compelling arguments to support a variance. When staff deals with subdivisions that are farther out, the cumulative impacts of the smaller subdivisions add up over time. He spoke of the formula for requiring paving of roads. He urged the board to not vary from the regulations for road improvement requirements. If the board thinks it is onerous to request road improvements or cash-in-lieu then they need to entertain a variance from the regulations and forward that variance to road provisions as well.

**MAIN MOTION  
TO ADOPT F.O.F.**

Dziza made a motion seconded by Heim to adopt staff report FPP 08-18 as findings-of-fact.

**BOARD  
DISCUSSION**

Dziza asked about adding a finding as recommended by staff.

Mouch read her recommendation for the board on amending finding-of-fact #22.

**SUBSIDIARY  
MOTION  
(Add F.O.F #23)**

Cross made a motion seconded by DeKort to add finding-of-fact #23 to read: *Ashley Lake Road crosses two different sections of State Trust Land but the County has no easements. The Department of Natural Resources and Conservation has requested that the applicant obtain the easements on behalf of the County.*

**ROLL CALL  
(Add F.O.F #23)**

On a roll call vote the motion passed unanimously.

**BOARD  
DISCUSSION**

Harris and the board discussed, at length, the issue of obtaining easements and responsibility for acquiring those easements.

**SUBSIDIARY  
MOTION  
(Amnd F.O.F #12)**

Pitman made a motion seconded by Hickey-AuClaire to amend finding-of-fact #12 to read: *The proposed subdivision will result in a traffic increase of 10 vehicle trips per day. Based on the direct impact formula the applicant will be required to pave 649 feet of Ashley Lake Road ~~or offer cash in lieu of the required pavement.~~ Staff finds the dust control and mitigation plan submitted with the application adequately addresses construction related dust and air quality issues.*

**BOARD  
DISCUSSION**

The board and staff discussed the easement issue and paving Ashley Lake Road.

**ROLL CALL  
(Amnd F.O.F #12)**

On a roll call vote the motion passed unanimously.

**SUBSIDIARY  
MOTION  
(Amnd F.O.F #23)**

Cross made a motion seconded by Dziza to amend finding-of-fact #23 to read: *However, the Planning Board does not support the request because it places an unreasonable burden on the private property owner.*

**BOARD  
DISCUSSION**

None.

**ROLL CALL  
(Amnd F.O.F #23)**

On a roll call vote the motion passed 6-1 with Pitman abstaining.

**ROLL CALL TO  
ADOPT F.O.F.**

On a roll call vote the motion passed unanimously.

**MOTION TO  
RECOMMEND  
APPROVAL**

Pitman made a motion seconded by DeKort to adopt Staff Report FPP 08-18 and recommend approval to the Board of County Commissioners.

**BOARD  
DISCUSSION**

Heim asked about the easement splitting a lot within a subdivision.

Harris said subdivision review in 2005 was not as thorough as it is now.

Mouch agreed with the statement. In the amended Hodge Creek amended lot 1 and 2A, the easement was required to be realigned so as not to bisect the two lots. It was not caught in the original subdivision. In 2007 it was required to be addressed and dealt with. It was condition #16 and it said no lot shall be split by an easement and the existing easement across the proposed lots must be satisfactorily exchanged for an easement along Hodge Creek Drive prior to final plat approval.

Cross said it came out in a public hearing.

Mower asked Wilson if the problem would go away if they just did a boundary line adjustment.

Wilson said it would but the impacts would be the same and wondered what the purpose would be.

Mower said it doesn't detract value.

Kauffman said it was a 60-acre remainder on the original Hodge Creek South.

Harris said when we have those situations, where a road or something bisects a lot, we have to referee between the neighbors. It's a difficult thing to do and said why allow the possibility to happen.

**SUBSIDIARY  
MOTION  
(Amnd Condition  
#16)**

Cross made a motion seconded by Hickey-AuClaire to amend condition #16 to read: *The applicant shall pave 649' of Ashley Lake Road, from the end of the existing pavement north, ~~or offer cash in lieu as an alternative~~ in order to meet the requirement set forth in Section 4.7.18 of the Flathead County Subdivision Regulations.*

**ROLL CALL  
(Amnd Condition  
#16)**

On a roll call vote the motion passed unanimously.

**BOARD  
DISCUSSION**

Mower wanted to amend condition #19.

**SUBSIDIARY  
MOTION  
(Amnd Condition  
#19)**

Cross made a motion seconded by Mower to amend condition #19 to read: *The applicant may enter into a boundary line adjustment to remove the easement from the property.*

**ROLL CALL  
(Amnd Condition  
#19)**

On a roll call vote the motion passed unanimously.

**SUBSIDIARY  
MOTION  
(Amend  
Condition #18)**

Hickey-AuClaire made a motion seconded by DeKort to amend condition #18 to read: *A "no build" zone shall encompass the wetlands, seasonal pond, intermittent stream and ephemeral drainage area on the subject property in addition to a 100-foot buffer extending from the designated high-water mark (3,862 feet) surrounding all sensitive wetland area. The "no-build" zone and ~~50-foot~~ 100-foot buffer shall be shown on the face of the Final Plat.*

**ROLL CALL  
(Amnd Condition  
#18)**

On a roll call vote the motion passed unanimously.

**SUBSIDIARY  
MOTION  
(Amnd Condition  
#17)**

Cross made a motion seconded by Hickey-AuClaire to amend condition #17 to read: *No further subdivision is allowed to go on the face of the plat.*

**ROLL CALL  
(Amnd Condition  
#17)**

On a roll call vote the motion passed 6-1 with Dziza dissenting.

**BOARD  
DISCUSSION**

Dziza wanted discussion on the 650 feet of paving.

The board discussion of the increase in frequency of road usage.

Harris said there was not only traffic count but length of road as well which was taken into account.

Cross said they should support the formula in place for subdivisions and let the commissioners make the decision.

**ROLL CALL TO  
RECOMMEND  
APPROVAL**

On a roll call vote the motion passed 6-1 with Mower dissenting.

**PRELIMINARY  
PLAT/MARCO  
HEIGHTS 2  
(FPP 08-20)**

A request by Dan Gullotta for Preliminary Plat approval of Marco Heights 2, a two (2) lot commercial subdivision on 1.96 acres. Lots in the subdivision are proposed to have multiple-user water and public sewer systems. The property is located at 77 Deer Creek Road.

**STAFF REPORT**

Allison Mouch reviewed FPP 08-20 for the board.

**BOARD  
QUESTIONS**

Cross asked for clarification regarding which property was under discussion on the visual.

Mouch said it was the frontage property.

Mouch said the multi-user well exists and as a condition of final plat it will be upgraded to a public well.

Cross asked what the issue is with the well and easement and if it's part of the hardship.

Mouch spoke with the Environmental Health Department and reiterated they felt it would not be a hardship to avoid wellhead.

**APPLICANT  
PRESENTATION**

Johna Morrison, of APEC, represented the applicant. The well is a shared multi-user; it is not a public well. The amount of traffic that turns off onto Deer Creek Road was a concern of the Lakeside Community Council. She spoke of the statistics regarding accidents along Deer Creek Road. They are asking for a variance for the easement off the road because the property owner to the north was not willing to work with the applicant for usage of the existing road. They applied initially because the road comes down at a 65 degree angle. They asked for a variance to come off of the highway otherwise they would have had to ask for two variances, one for the distance from well, one for the degree of access off the road. Another concern of the Lakeside Community Council was the need for a guardrail, turning lane, and to have the speed limit lowered. There is a passing lane where people need to turn and she recommended taking the passing lane out.

**BOARD  
QUESTIONS**

None.

**AGENCY  
COMMENTS**

None.



**PUBLIC  
COMMENT**

Marty Wardle, 470 Deer Creek, owns property with her boyfriend. She and others have been trying to get subdivision regulations on that road. She commended the board for taking into consideration regulations of past projects as well as current situations in the valley. She said the main issue is they do not want a lot of development because they want to keep it rural. They have backed off as the Lakeside Neighborhood Plan is being updated. The main issue is the safety with the traffic. The passing lane is a problem. The summer has more people and the winter has more road conditions. She thinks commercial development is scary in light of the problems with the road conditions.

Susan Handy, 150 Little Deer Creek Road, said the neighborhood landowners signed a petition to send to the Montana Department of Transportation (MDT) requesting improvements to the whole intersection. They are mainly concerned with the whole section of road becoming increasingly problematic. Because of this proposal, she took pictures and she handed them to the board. She is not objecting commercial development as she is a client at one of the commercial businesses in that area. What she objects to is the lack of infrastructure, and that is needed before further development occurs. She went through the pictures for the board. She felt the state and the county, as well as the developers, should fix the road and further subdivision should be held up until that happens. She feels the neighbors are lacking knowledge but are learning as they go along.

Suzanne Gullotta, applicant's wife, is asking to split her acreage for business reasons. The people interested in her medical office are not interested in the additional acreage. She is happy to comply with any regulations she needs to. She shares the same safety concerns as the neighbors.

**APPLICANT  
REBUTTAL**

None.

**STAFF  
REBUTTAL**

Mouch said the minimum road angle is 75 degrees. If the easement was extended to 60 feet it appears that angle can be accommodated. She was not sure of the stacking distance. That would be reviewed by the road and bridge department when the approach permit was applied for. The well is not an issue. She reiterated the comments from the Environmental Health Department.

**MAIN MOTION  
ADOPT F.O.F**

Hickey-AuClaire made a motion seconded by DeKort to adopt staff report FPP 08-20 as findings-of-fact.

**BOARD  
DISCUSSION**

Hickey-AuClaire asked for clarification on the flood zones referenced in the staff report.

Harris clarified.

Cross spoke about the public comment and the applicant's testimony regarding the traffic situation. The applicant and the public are proposing a solid line as opposed to the dotted line currently in place on the highway.

**SUBSIDIARY  
MOTION  
(Add F.O.F #20)**

Cross made a motion seconded by Hickey-AuClaire to add finding-of-fact #20 to read: *Public testimony and applicant focused on traffic concerns. The applicant and the public both suggested the situation could be improved by the removal of the passing zone on Hwy 93.*

**ROLL CALL  
(Add F.O.F #20)**

On a roll call vote the motion passed unanimously.

**ROLL CALL ON  
F.O.F.**

On a roll call vote the motion passed unanimously.

**MAIN MOTION  
TO APPROVE**

Heim made a motion seconded by Hickey-AuClaire to adopt staff report FPP 08-20 and recommend approval to the Board of County Commissioners.

**ROLL CALL TO  
APPROVE**

On a roll call vote the motion passed unanimously.

**COMMITTEE  
REPORTS**

Cross said Committee B met and they are getting ready for the presentation of the Whitefish zoning district donut area. Everything is on track and scheduled for December 17, 2008. There has been a certain amount of activity of property owners petitioning for different zoning than what has already been decided on. This should be done after the district has been established.

Mower said they are trying to make the new zoning district reflect the old zoning district.

Harris said Big Mountain is problematic in that their zoning requires an overall development plan. They do not have an environmental review to go along with it. Staff is trying to resolve that issue before it is presented to the board.

Committee A will meet on December 4, 2008. Staff is working on a development predictability map. The committee feels they need some guidance but they want to present it to the commissioners for the public.

**OLD BUSINESS**

Harris stated the Natural Resource Committee wants a Planning Board member to sit on the committee to represent the board. Pitman volunteered.

Harris spoke of board training, for the new members appointed by the commissioners in December, before they begin their terms.

The board discussed the meeting November 20, 2008 with the BLUAC committee. There will not be a quorum so the meeting will have to be rescheduled.

**NEW BUSINESS**

None.

**ADJOURNMENT**

The meeting was adjourned at approximately 9:00 pm. on a motion by Heim. The next meeting will be held at 6:00 p.m. on December 3, 2008.

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Gordon Cross, President

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Donna Valade, Recording Secretary

*APPROVED AS SUBMITTED/CORRECTED: \_\_\_\_/\_\_\_\_/08*